

REMARKS

Preliminary to discussion of the action on the merits, Applicant believes it helpful to briefly review the novel subject matter which he believes to be patentable over the art. The concept claimed herein is both simple yet unique, and provides substantial utilitarian advantage over the prior art. The device, which is now more precisely defined in new independent Claims 7 & 8, is directed to a personal protection device, that can be used independent of a uniform or garment (e.g. sweat shirt), or be integral with a garment. The device is in the nature of protective apparel and engineered to conform to the personal contours of the individual wearer, specifically the forearm of the wearer. Such conformance is achieved by means of a resilient sleeve, and means for releasable attachment of a protective pad to the sleeve. The resilient/elastomeric material of the sleeve comprises a moisture absorbing fabric which prevents perspiration from running down the forearm to the hand of the wearer, and thereby prevents such moisture from effecting the grip of the wearer (e.g., wrist sweat band) during his occupational or sports activity.

Turning now to the action on the merits, the Examiner has raised an objection to the reference in the text to the material "Velcro", without proper attribution of the proprietary nature of such term. Applicant has amended his specification, as suggested by the Examiner, to remove such objection.

The Examiner has also rejected the subject matter of Claims 1-2 as anticipated by Chase (US 3,189,919). It is the Examiner's position that Chase '919 discloses the claimed elements of the invention, specifically, a tubular protective sleeve comprising a resilient material and an impact absorbing pad of protective foam affixed to the tubular sleeve.

It is noted and emphasized that original Claims 1 & 6 have been cancelled, and new independent Claims 7 & 8 presented herein. Where appropriate, the limitations of dependent claim 6 have been incorporated into independent Claims 7. Claim 7 is intended as a replacement for original Claim 1 and substantially differs in specificity and, thus, is more limited in scope than original Claim 1. Moreover, Claim 8 is directed to an improved garment wherein the protective sleeve is incorporated into the garment. In each instance, each of these claims include material limitations which distinctly claim and differentiate the invention from Chase '919. More specifically, Chase '919 discloses what can best be described an *Ace* bandage-like sleeve wherein the sleeve includes a "pocket" for insertion of the protective foam pad. This "pocket" is illustrated in Fig. 6. An alternatively embodiment of the Chase '919 invention comprises an ensemble of concentric sleeves which defines a compartment there between for insertion of a protective foam pad, such as is illustrated in Fig. 8.

In each instance, the Claims presented herein differ from the Chase embodiments in respect to the means for association of the sleeve and the protective pad – the Claims of the instant invention specifying that the pad be either integral with the sleeve or releasable affixed to the sleeve with a hook and loop-like fastener. Accordingly, the scope of the instant claims are distinct from the disclosure of Chase '919; and, thus, Applicant respectfully requests withdrawal of the rejection of the subject matter of original claims under 35 USC 102.

The Examiner has further rejected Applicant's original Claims 3 to 5 under 35 USC 103 as unpatentable over Chase '919 in view of Lerman (US 4,832,010). The Examiner relies upon Chase '919 for its disclosure of a tubular protective device having an impact absorbing pad within a pocket

defined by the multiple layers of the tubular device. Lerman is relied upon by the Examiner for its disclosure of an *orthopedic support* comprising a flexible tubular structure having an "orthopedic compression support" integral with the body of the Lerman device. The Examiner concludes that Chase discloses virtually all of the features of Applicant's invention, except for the preferred materials of choice used in the fabrication of the claimed device. Lerman purportedly supplements the deficiencies in Chase relative to such preferred materials, specifically, Lerman's disclosure of the tubular structure being fabricated from terry cloth and a Neoprene pad integral with the terry cloth sleeve.

Applicant respectfully traverses such rejection under 35 USC 103 for the reasons set forth hereinafter. At the outset, the newly presented independent claims, specifically, Claims 7 & 8 define a forearm protective device and garment incorporating a forearm protective device wherein the protective pad is either integral with or releasable attached to a resilient, moisture absorbing sleeve, intended for protection of the forearm of the wearer. In each instance, each of the sleeve and the protective pad perform their respective functions without compromise in the performance of the function of the other. The distinction between Claims 7 & 8 of Chase '919 are real and define patentably distinctive subject matter. In Chase '919, the relative protection afforded to an individual by the Chase '919 device is dependent upon the degree of compression of the protective pad once the sleeve is fitted on the wearer's forearm. More specifically, once the device of Chase '919 is adorned by the wearer, the elastic material of the sleeve is distended and compresses the protective pad *within the pocket* of the sleeve, thereby reducing the shock absorbing protection of the pad afforded to the wearer. In contrast, the scope of Claims 7 & 8 contemplate the attachment of the

protective pad to the *exterior surface* of the sleeve, thereby avoiding compression of the protective pad upon distention of the flexible sleeve on the forearm of the wearer. Thus, the protective pad retains more of its shock absorbing properties and protective value.

The Lerman patent disclosure tends to reinforce the foregoing differences, specifically, Lerman achieves increased orthopedic support for his device by incorporation of a Neoprene pad within the body of his orthopedic support. Presumably, upon adornment of the Lerman device, the sleeve is distended causing compression of the Neoprene pad within so as to increase the pressure from the Neoprene pad, from within the orthopedic support, upon the effected joint.

In view of the foregoing, it is submitted that Chase alone, or in combination with Lerman does not teach or suggest the composite structure of the protective device of Applicant's claims. Accordingly, Applicant respectfully requests withdrawal of the rejection of his claims, based upon their combined teachings, under 35 USC 103.

The Examiner has further rejected Claim 6 under 35 USC 103 as unpatentable over Chase in view of Lavoie (US 4,707,861). Chase '919 is relied upon as stated above in the rejection of Claims 3-5. Lavoie is relied upon for its disclosure of a body armor ("sturdy rigid plate") having a shock dampening pad releasably affixed to the exterior surface of the sturdy rigid plate. It is the Examiner's position that it would be obvious to modify the structure of Chase (the pocket configuration for housing the protective pad), by the substitution of a hook and loop fastener of Lavoie on the exterior surface of the resilient sleeve, for attachment of a protective pad to the resilient sleeve of stretchable fabric.

At the outset, the noted distinctions relative to the secondary art (body armor) render such art inaccessible to the Examiner for combination with the primary reference. Even if such combination were permissible, the resultant combination would still not produce the structure of the claim device. More specifically, the relative position of the protective pad within the pocket of the Chase '919 protective device is a material feature of his claimed combination. Thus, the relocation of such pad from the pocket to the surface of the resilient sleeve is certainly something that is not contemplated nor suggested by Chase. The suggested modification of the Chase configuration with the teachings of Lavoie, in the manner suggested by the Examiner, thus, clearly does not appear within the text of the Chase patent. Similarly, the body armor which is the subject of the Lavoie patent is also similarly focused upon the unique environment wherein its device must function. The Lavoie environment necessarily requires the use of a sturdy rigid plate as a platform for the protective pad. Accordingly, Lavoie does not contemplate the use of a fabric sleeve as a component of his body armor. Clearly, the suggestion to selectively combine the teachings for each of these references does not appear in the references themselves. Thus, the Examiner's piecemeal reconstruction of the claims from these references is unsupportable and improper.

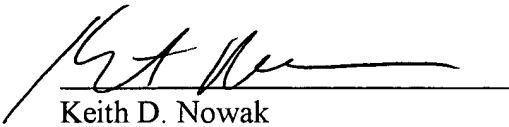
In view of the foregoing, it is submitted that Chase alone, or in combination with Lavoie does not teach or suggest the composite structure of the protective device of Applicant's claims. Accordingly, Applicant respectfully requests withdrawal of the rejection of his claims, based upon their combined teachings, under 35 USC 103.

Summary & Conclusion

The art of record is deficient in its teachings of a composite protective device wherein the protective pad is affixed to the exterior surface of a resilient sleeve of moisture absorbing material. The attachment of the protective pad to the sleeve is accomplished in a manner that does not alter the effectiveness or performance of the either of the component parts of the device when the device is adorned by the wearer. More specifically, the presence of the pad upon the surface of the sleeve does not increase the pressure of the sleeve upon the forearm, nor does the distension of the sleeve on the forearm cause compression of the protective pad of the device. Thus, each of these components parts of the composite continue to function as contemplated in the combination without change or interference in the performance of one another.

In view of the substantive changes made in the newly presented independent claims (Claims 7 & 8) it is submitted that the application presents patentable subject matter over the art. Applicant respectfully request that the Examiner favorably review the new claims and should he agree that patentable subject matter is presented therein, either pass the case to issue or contact Applicant's counsel to discuss any issues that may require resolution.

Respectfully submitted,



Keith D. Nowak
Reg. No. 27,367
LIEBERMAN & NOWAK, LLP
350 Fifth Avenue
New York, NY 10118
(212) 947-0500